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110TH CONGRESS
2D SESSION

S. 3344

To defend against child exploitation and child pornography through improved Internet Crimes Against Children task forces and enhanced tools to block illegal images, and to eliminate the unwarranted release of convicted sex offenders.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2008

Mr. COBURN introduced the following bill; which was read the first time

JULY 28, 2008

Read the second time and placed on the calendar

A BILL

To defend against child exploitation and child pornography through improved Internet Crimes Against Children task forces and enhanced tools to block illegal images, and to eliminate the unwarranted release of convicted sex offenders.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Protecting Children from Pornography and Internet Ex-
 4 ploitation Act of 2008”.

5 (b) TABLE OF CONTENTS.—The table of contents for
 6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROTECT OUR CHILDREN ACT OF 2008

Sec. 101. Short title.

Sec. 102. Definitions.

Subtitle A—National Strategy for Child Exploitation Prevention and
 Interdiction

Sec. 111. Establishment of National Strategy for Child Exploitation Prevention
 and Interdiction.

Sec. 112. Establishment of National ICAC Task Force Program.

Sec. 113. Purpose of ICAC task forces.

Sec. 114. Duties and functions of task forces.

Sec. 115. National Internet Crimes Against Children Data System.

Sec. 116. ICAC grant program.

Sec. 117. Authorization of appropriations.

Subtitle B—ADDITIONAL MEASURES TO COMBAT CHILD
 EXPLOITATION

Sec. 121. Additional regional computer forensic labs.

Subtitle C—Effective Child Pornography Prosecution

Sec. 131. Amendment to section 2256 of title 18, United States Code.

Sec. 132. Amendment to section 2260 of title 18, United States Code.

Sec. 133. Prohibiting the adaptation or modification of an image of an identifi-
 able minor to produce child pornography.

Subtitle D—National Institute of Justice Study of Risk Factors

Sec. 141. NIJ study of risk factors for assessing dangerousness.

TITLE II—ENHANCING THE EFFECTIVE PROSECUTION OF CHILD
 PORNOGRAPHY ACT OF 2007

Sec. 201. Short title.

Sec. 202. Money laundering predicate.

Sec. 203. Knowingly accessing child pornography with the intent to view child
 pornography.

TITLE III—SECURING ADOLESCENTS FROM ONLINE
 EXPLOITATION

Sec. 301. Reporting requirements of electronic communication service providers and remote computing service providers.

TITLE IV—IMPROVEMENTS TO COMMERCE CLAUSE AUTHORITIES
TO ALLOW FOR EFFECTIVE CHILD PORNOGRAPHY PROSECUTIONS

Sec. 401. Effective child pornography prosecution.

1 **TITLE I—PROTECT OUR**
2 **CHILDREN ACT OF 2008**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Providing Resources,
5 Officers, and Technology To Eradicate Cyber Threats to
6 Our Children Act of 2008” or the “PROTECT Our Chil-
7 dren Act of 2008”.

8 **SEC. 102. DEFINITIONS.**

9 In this title, the following definitions shall apply:

10 (1) CHILD EXPLOITATION.—The term “child
11 exploitation” means any conduct, attempted conduct,
12 or conspiracy to engage in conduct involving a minor
13 that violates section 1591, chapter 109A, chapter
14 110, and chapter 117 of title 18, United States
15 Code, or any sexual activity involving a minor for
16 which any person can be charged with a criminal of-
17 fense.

18 (2) CHILD OBSCENITY.—The term “child ob-
19 scenity” means any visual depiction proscribed by
20 section 1466A of title 18, United States Code.

21 (3) MINOR.—The term “minor” means any per-
22 son under the age of 18 years.

1 (4) SEXUALLY EXPLICIT CONDUCT.—The term
 2 “sexually explicit conduct” has the meaning given
 3 such term in section 2256 of title 18, United States
 4 Code.

5 **Subtitle A—National Strategy for**
 6 **Child Exploitation Prevention**
 7 **and Interdiction**

8 **SEC. 111. ESTABLISHMENT OF NATIONAL STRATEGY FOR**
 9 **CHILD EXPLOITATION PREVENTION AND**
 10 **INTERDICTION.**

11 (a) IN GENERAL.—The Attorney General of the
 12 United States shall create and implement a National
 13 Strategy for Child Exploitation Prevention and Interdic-
 14 tion.

15 (b) TIMING.—Not later than February 1 of each
 16 year, the Attorney General shall submit to Congress the
 17 National Strategy established under subsection (a).

18 (c) REQUIRED CONTENTS OF NATIONAL STRAT-
 19 EGY.—The National Strategy established under subsection
 20 (a) shall include the following:

21 (1) Comprehensive long-range, goals for reduc-
 22 ing child exploitation.

23 (2) Annual measurable objectives and specific
 24 targets to accomplish long-term, quantifiable goals
 25 that the Attorney General determines may be

1 achieved during each year beginning on the date
2 when the National Strategy is submitted.

3 (3) Annual budget priorities and Federal efforts
4 dedicated to combating child exploitation, including
5 resources dedicated to Internet Crimes Against Chil-
6 dren task forces, Project Safe Childhood, FBI Inno-
7 cent Images Initiative, the National Center for Miss-
8 ing and Exploited Children, regional forensic com-
9 puter labs, Internet Safety programs, and all other
10 entities whose goal or mission is to combat the ex-
11 ploitation of children that receive Federal support.

12 (4) A 5-year projection for program and budget
13 goals and priorities.

14 (5) A review of the policies and work of the De-
15 partment of Justice related to the prevention and in-
16 vestigation of child exploitation crimes, including ef-
17 forts at the Office of Justice Programs, the Criminal
18 Division of the Department of Justice, the Executive
19 Office of United States Attorneys, the Federal Bu-
20 reau of Investigation, the Office of the Attorney
21 General, the Office of the Deputy Attorney General,
22 the Office of Legal Policy, and any other agency or
23 bureau of the Department of Justice whose activities
24 relate to child exploitation.

1 (6) A description of the Department's efforts to
2 coordinate with international, State, local, tribal law
3 enforcement, and private sector entities on child ex-
4 ploitation prevention and interdiction efforts.

5 (7) Plans for interagency coordination regard-
6 ing the prevention, investigation, and apprehension
7 of individuals exploiting children, including coopera-
8 tion and collaboration with—

9 (A) Immigration and Customs Enforce-
10 ment;

11 (B) the United States Postal Inspection
12 Service;

13 (C) the Department of State;

14 (D) the Department of Commerce;

15 (E) the Department of Education;

16 (F) the Department of Health and Human
17 Services; and

18 (G) other appropriate Federal agencies.

19 (8) A review of the Internet Crimes Against
20 Children Task Force Program, including—

21 (A) the number of ICAC task forces and
22 location of each ICAC task force;

23 (B) the number of trained personnel at
24 each ICAC task force;

1 (C) the amount of Federal grants awarded
2 to each ICAC task force;

3 (D) an assessment of the Federal, State,
4 and local cooperation in each task force, includ-
5 ing—

6 (i) the number of arrests made by
7 each task force;

8 (ii) the number of criminal referrals
9 to United States attorneys for prosecution;

10 (iii) the number of prosecutions and
11 convictions from the referrals made under
12 clause (ii);

13 (iv) the number, if available, of local
14 prosecutions and convictions based on
15 ICAC task force investigations; and

16 (v) any other information dem-
17 onstrating the level of Federal, State, and
18 local coordination and cooperation, as such
19 information is to be determined by the At-
20 torney General;

21 (E) an assessment of the training opportu-
22 nities and technical assistance available to sup-
23 port ICAC task force grantees; and

24 (F) an assessment of the success of the
25 Internet Crimes Against Children Task Force

1 Program at leveraging State and local resources
2 and matching funds.

3 (9) An assessment of the technical assistance
4 and support available for Federal, State, local, and
5 tribal law enforcement agencies, in the prevention,
6 investigation, and prosecution of child exploitation
7 crimes.

8 (10) A review of the backlog of forensic analysis
9 for child exploitation cases at each FBI Regional
10 Forensic lab and an estimate of the backlog at State
11 and local labs.

12 (11) Plans for reducing the forensic backlog de-
13 scribed in paragraph (10), if any, at Federal, State
14 and local forensic labs.

15 (12) A review of the Federal programs related
16 to child exploitation prevention and education, in-
17 cluding those related to Internet safety, including ef-
18 forts by the private sector and nonprofit entities, or
19 any other initiatives, that have proven successful in
20 promoting child safety and Internet safety.

21 (13) An assessment of the future trends, chal-
22 lenges, and opportunities, including new tech-
23 nologies, that will impact Federal, State, local, and
24 tribal efforts to combat child exploitation.

1 (14) Plans for liaisons with the judicial
2 branches of the Federal and State governments on
3 matters relating to child exploitation.

4 (15) An assessment of Federal investigative and
5 prosecution activity relating to reported incidents of
6 child exploitation crimes, which shall include a num-
7 ber of factors, including—

8 (A) the number of high-priority suspects
9 (identified because of the volume of suspected
10 criminal activity or because of the danger to the
11 community or a potential victim) who were in-
12 vestigated and prosecuted;

13 (B) the number of investigations, arrests,
14 prosecutions and convictions for a crime of
15 child exploitation; and

16 (C) the average sentence imposed and stat-
17 utory maximum for each crime of child exploi-
18 tation.

19 (16) A review of all available statistical data in-
20 dicating the overall magnitude of child pornography
21 trafficking in the United States and internationally,
22 including—

23 (A) the number of computers or computer
24 users, foreign and domestic, observed engaging
25 in, or suspected by law enforcement agencies

1 and other sources of engaging in, peer-to-peer
2 file sharing of child pornography;

3 (B) the number of computers or computer
4 users, foreign and domestic, observed engaging
5 in, or suspected by law enforcement agencies
6 and other reporting sources of engaging in,
7 buying and selling, or other commercial activity
8 related to child pornography;

9 (C) the number of computers or computer
10 users, foreign and domestic, observed engaging
11 in, or suspected by law enforcement agencies
12 and other sources of engaging in, all other
13 forms of activity related to child pornography;

14 (D) the number of tips or other statistical
15 data from the National Center for Missing and
16 Exploited Children's CyberTipline and other
17 data indicating the magnitude of child pornog-
18 raphy trafficking; and

19 (E) any other statistical data indicating
20 the type, nature, and extent of child exploi-
21 tation crime in the United States and abroad.

22 (17) Copies of recent relevant research and
23 studies related to child exploitation, including—

1 (A) studies related to the link between pos-
2 session or trafficking of child pornography and
3 actual abuse of a child;

4 (B) studies related to establishing a link
5 between the types of files being viewed or
6 shared and the type of illegal activity; and

7 (C) any other research, studies, and avail-
8 able information related to child exploitation.

9 (18) A review of the extent of cooperation, co-
10 ordination, and mutual support between private sec-
11 tor and other entities and organizations and Federal
12 agencies, including the involvement of States, local
13 and tribal government agencies to the extent Federal
14 programs are involved.

15 (19) The results of the Project Safe Childhood
16 Conference or other conferences or meetings con-
17 vened by the Department of Justice related to com-
18 bating child exploitation

19 (d) APPOINTMENT OF HIGH-LEVEL OFFICIAL.—

20 (1) IN GENERAL.—The Attorney General shall
21 designate a senior official at the Department of Jus-
22 tice to be responsible for coordinating the develop-
23 ment of the National Strategy established under
24 subsection (a).

1 (2) DUTIES.—The duties of the official des-
2 ignated under paragraph (1) shall include—

3 (A) acting as a liaison with all Federal
4 agencies regarding the development of the Na-
5 tional Strategy;

6 (B) working to ensure that there is proper
7 coordination among agencies in developing the
8 National Strategy;

9 (C) being knowledgeable about budget pri-
10 orities and familiar with all efforts within the
11 Department of Justice and the FBI related to
12 child exploitation prevention and interdiction;
13 and

14 (D) communicating the National Strategy
15 to Congress and being available to answer ques-
16 tions related to the strategy at congressional
17 hearings, if requested by committees of appro-
18 priate jurisdictions, on the contents of the Na-
19 tional Strategy and progress of the Department
20 of Justice in implementing the National Strat-
21 egy.

22 **SEC. 112. ESTABLISHMENT OF NATIONAL ICAC TASK FORCE**
23 **PROGRAM.**

24 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—There is established within
2 the Department of Justice, under the general au-
3 thority of the Attorney General, a National Internet
4 Crimes Against Children Task Force Program (here-
5 inafter in this title referred to as the “ICAC Task
6 Force Program”), which shall consist of a national
7 program of State and local law enforcement task
8 forces dedicated to developing effective responses to
9 online enticement of children by sexual predators,
10 child exploitation, and child obscenity and pornog-
11 raphy cases.

12 (2) INTENT OF CONGRESS.—It is the purpose
13 and intent of Congress that the ICAC Task Force
14 Program established under paragraph (1) is in-
15 tended to continue the ICAC Task Force Program
16 authorized under title I of the Departments of Com-
17 merce, Justice, and State, the Judiciary, and Re-
18 lated Agencies Appropriations Act, 1998, and fund-
19 ed under title IV of the Juvenile Justice and Delin-
20 quency Prevention Act of 1974.

21 (b) NATIONAL PROGRAM.—

22 (1) STATE REPRESENTATION.—The ICAC Task
23 Force Program established under subsection (a)
24 shall include at least 1 ICAC task force in each
25 State.

1 (2) CAPACITY AND CONTINUITY OF INVESTIGA-
2 TIONS.—In order to maintain established capacity
3 and continuity of investigations and prosecutions of
4 child exploitation cases, the Attorney General, shall,
5 in establishing the ICAC Task Force Program under
6 subsection (a) consult with and consider all 59 task
7 forces in existence on the date of enactment of this
8 Act. The Attorney General shall include all existing
9 ICAC task forces in the ICAC Task Force Program,
10 unless the Attorney General makes a determination
11 that an existing ICAC does not have a proven track
12 record of success.

13 (3) ONGOING REVIEW.—The Attorney General
14 shall—

15 (A) conduct periodic reviews of the effec-
16 tiveness of each ICAC task force established
17 under this section; and

18 (B) have the discretion to establish a new
19 task force if the Attorney General determines
20 that such decision will enhance the effectiveness
21 of combating child exploitation provided that
22 the Attorney General notifies Congress in ad-
23 vance of any such decision and that each state
24 maintains at least 1 ICAC task force at all
25 times.

1 (4) TRAINING.—

2 (A) IN GENERAL.—The Attorney General
3 may establish national training programs to
4 support the mission of the ICAC task forces, in-
5 cluding the effective use of the National Inter-
6 net Crimes Against Children Data System.

7 (B) LIMITATION.—In establishing training
8 courses under this paragraph, the Attorney
9 General may not award any one entity other
10 than a law enforcement agency more than
11 \$2,000,000 annually to establish and conduct
12 training courses for ICAC task force members
13 and other law enforcement officials.

14 (C) REVIEW.—The Attorney General
15 shall—

16 (i) conduct periodic reviews of the ef-
17 fectiveness of each training session author-
18 ized by this paragraph; and

19 (ii) consider outside reports related to
20 the effective use of Federal funding in
21 making future grant awards for training.

22 **SEC. 113. PURPOSE OF ICAC TASK FORCES.**

23 The ICAC Task Force Program, and each State or
24 local ICAC task force that is part of the national program
25 of task forces, shall be dedicated toward—

1 (1) increasing the investigative capabilities of
2 State and local law enforcement officers in the de-
3 tection, investigation, and apprehension of Internet
4 crimes against children offenses or offenders, includ-
5 ing technology-facilitated child exploitation offenses;

6 (2) conducting proactive and reactive Internet
7 crimes against children investigations;

8 (3) providing training and technical assistance
9 to ICAC task forces and other Federal, State, and
10 local law enforcement agencies in the areas of inves-
11 tigations, forensics, prosecution, community out-
12 reach, and capacity-building, using recognized ex-
13 perts to assist in the development and delivery of
14 training programs;

15 (4) increasing the number of Internet crimes
16 against children offenses being investigated and
17 prosecuted in both Federal and State courts;

18 (5) creating a multiagency task force response
19 to Internet crimes against children offenses within
20 each State;

21 (6) participating in the Department of Justice's
22 Project Safe Childhood initiative, the purpose of
23 which is to combat technology-facilitated sexual ex-
24 ploitation crimes against children;

1 (7) enhancing nationwide responses to Internet
2 crimes against children offenses, including assisting
3 other ICAC task forces, as well as other Federal,
4 State, and local agencies with Internet crimes
5 against children investigations and prosecutions;

6 (8) developing and delivering Internet crimes
7 against children public awareness and prevention
8 programs; and

9 (9) participating in such other activities, both
10 proactive and reactive, that will enhance investiga-
11 tions and prosecutions of Internet crimes against
12 children.

13 **SEC. 114. DUTIES AND FUNCTIONS OF TASK FORCES.**

14 Each State or local ICAC task force that is part of
15 the national program of task forces shall—

16 (1) consist of State and local investigators,
17 prosecutors, forensic specialists, and education spe-
18 cialists who are dedicated to addressing the goals of
19 such task force;

20 (2) work consistently toward achieving the pur-
21 poses described in section 113;

22 (3) engage in proactive investigations, forensic
23 examinations, and effective prosecutions of Internet
24 crimes against children;

1 (4) provide forensic, preventive, and investiga-
2 tive assistance to parents, educators, prosecutors,
3 law enforcement, and others concerned with Internet
4 crimes against children;

5 (5) develop multijurisdictional, multiagency re-
6 sponses and partnerships to Internet crimes against
7 children offenses through ongoing informational, ad-
8 ministrative, and technological support to other
9 State and local law enforcement agencies, as a
10 means for such agencies to acquire the necessary
11 knowledge, personnel, and specialized equipment to
12 investigate and prosecute such offenses;

13 (6) participate in nationally coordinated inves-
14 tigations in any case in which the Attorney General
15 determines such participation to be necessary, as
16 permitted by the available resources of such task
17 force;

18 (7) establish or adopt investigative and prosecu-
19 tion standards, consistent with established norms, to
20 which such task force shall comply;

21 (8) investigate, and seek prosecution on, tips
22 related to Internet crimes against children, including
23 tips from Operation Fairplay, the National Internet
24 Crimes Against Children Data System established in
25 section 115, the National Center for Missing and

1 Exploited Children’s CyberTipline, ICAC task forces,
 2 and other Federal, State, and local agencies, with
 3 priority being given to investigative leads that indi-
 4 cate the possibility of identifying or rescuing child
 5 victims, including investigative leads that indicate a
 6 likelihood of seriousness of offense or dangerousness
 7 to the community;

8 (9) develop procedures for handling seized evi-
 9 dence;

10 (10) maintain—

11 (A) such reports and records as are re-
 12 quired under this subtitle; and

13 (B) such other reports and records as de-
 14 termined by the Attorney General; and

15 (11) seek to comply with national standards re-
 16 garding the investigation and prosecution of Internet
 17 crimes against children, as set forth by the Attorney
 18 General, to the extent such standards are consistent
 19 with the law of the State where the task force is lo-
 20 cated.

21 **SEC. 115. NATIONAL INTERNET CRIMES AGAINST CHIL-**
 22 **DREN DATA SYSTEM.**

23 (a) IN GENERAL.—The Attorney General shall estab-
 24 lish, consistent with all existing Federal laws relating to
 25 the protection of privacy, a National Internet Crimes

1 Against Children Data System. The system shall not be
2 used to search for or obtain any information that does
3 not involve the use of the Internet to post or traffic images
4 of child exploitation.

5 (b) PURPOSE OF SYSTEM.—The National Internet
6 Crimes Against Children Data System established under
7 subsection (a) shall be dedicated to assisting and sup-
8 porting credentialed law enforcement agencies authorized
9 to investigate child exploitation in accordance with Fed-
10 eral, State, local, and tribal laws, including by providing
11 assistance and support to—

12 (1) Federal agencies investigating and pros-
13 ecuting child exploitation;

14 (2) the ICAC Task Force Program established
15 under section 112;

16 (3) State, local, and tribal agencies inves-
17 tigating and prosecuting child exploitation; and

18 (4) foreign or international law enforcement
19 agencies, subject to approval by the Attorney Gen-
20 eral.

21 (c) CYBER SAFE DECONFLICTION AND INFORMATION
22 SHARING.—The National Internet Crimes Against Chil-
23 dren Data System established under subsection (a)—

1 (1) shall be housed and maintained within the
2 Department of Justice or a credentialed law enforce-
3 ment agency;

4 (2) shall be made available for a nominal
5 charge to support credentialed law enforcement
6 agencies in accordance with subsection (b); and

7 (3) shall—

8 (A) allow Federal, State, local, and tribal
9 agencies and ICAC task forces investigating
10 and prosecuting child exploitation to contribute
11 and access data for use in resolving case con-
12 flicts;

13 (B) provide, directly or in partnership with
14 a credentialed law enforcement agency, a dy-
15 namic undercover infrastructure to facilitate on-
16 line law enforcement investigations of child ex-
17 ploitation;

18 (C) facilitate the development of essential
19 software and network capability for law enforce-
20 ment participants; and

21 (D) provide software or direct hosting and
22 support for online investigations of child exploi-
23 tation activities, or, in the alternative, provide
24 users with a secure connection to an alternative
25 system that provides such capabilities, provided

1 that the system is hosted within a governmental
2 agency or a credentialed law enforcement agen-
3 cy.

4 (d) COLLECTION AND REPORTING OF DATA.—

5 (1) IN GENERAL.—The National Internet
6 Crimes Against Children Data System established
7 under subsection (a) shall ensure the following:

8 (A) REAL-TIME REPORTING.—All child ex-
9 ploitation cases involving local child victims that
10 are reasonably detectable using available soft-
11 ware and data are, immediately upon their de-
12 tection, made available to participating law en-
13 forcement agencies.

14 (B) HIGH-PRIORITY SUSPECTS.—Every 30
15 days, at minimum, the National Internet
16 Crimes Against Children Data System shall—

17 (i) identify high-priority suspects, as
18 such suspects are determined by the vol-
19 ume of suspected criminal activity or other
20 indicators of seriousness of offense or dan-
21 gerousness to the community or a potential
22 local victim; and

23 (ii) report all such identified high-pri-
24 ority suspects to participating law enforce-
25 ment agencies.

1 (C) ANNUAL REPORTS.—Any statistical
2 data indicating the overall magnitude of child
3 pornography trafficking and child exploitation
4 in the United States and internationally is
5 made available and included in the National
6 Strategy, as is required under section
7 111(c)(16).

8 (2) RULE OF CONSTRUCTION.—Nothing in this
9 subsection shall be construed to limit the ability of
10 participating law enforcement agencies to dissemi-
11 nate investigative leads or statistical information in
12 accordance with State and local laws.

13 (e) MANDATORY REQUIREMENTS OF NETWORK.—
14 The National Internet Crimes Against Children Data Sys-
15 tem established under subsection (a) shall develop, deploy,
16 and maintain an integrated technology and training pro-
17 gram that provides—

18 (1) a secure, online system for Federal law en-
19 forcement agencies, ICAC task forces, and other
20 State, local, and tribal law enforcement agencies for
21 use in resolving case conflicts, as provided in sub-
22 section (c);

23 (2) a secure system enabling online communica-
24 tion and collaboration by Federal law enforcement
25 agencies, ICAC task forces, and other State, local,

1 and tribal law enforcement agencies regarding ongoing investigations, investigatory techniques, best practices, and any other relevant news and professional information;

2 (3) a secure online data storage and analysis system for use by Federal law enforcement agencies, ICAC task forces, and other State, local, and tribal law enforcement agencies;

3 (4) secure connections or interaction with State and local law enforcement computer networks, consistent with reasonable and established security protocols and guidelines;

4 (5) guidelines for use of the National Internet Crimes Against Children Data System by Federal, State, local, and tribal law enforcement agencies and ICAC task forces; and

5 (6) training and technical assistance on the use of the National Internet Crimes Against Children Data System by Federal, State, local, and tribal law enforcement agencies and ICAC task forces.

6 (f) NATIONAL INTERNET CRIMES AGAINST CHILDREN DATA SYSTEM STEERING COMMITTEE.—The Attorney General shall establish a National Internet Crimes Against Children Data System Steering Committee to provide guidance to the Network relating to the program

1 under subsection (e), and to assist in the development of
2 strategic plans for the System. The Steering Committee
3 shall consist of 10 members with expertise in child exploi-
4 tation prevention and interdiction prosecution, investiga-
5 tion, or prevention, including—

6 (1) 3 representatives elected by the local direc-
7 tors of the ICAC task forces, such representatives
8 shall represent different geographic regions of the
9 country;

10 (2) 1 representative of the Department of Jus-
11 tice Office of Information Services;

12 (3) 1 representative from Operation Fairplay,
13 currently hosted at the Wyoming Office of the Attor-
14 ney General;

15 (4) 1 representative from the law enforcement
16 agency having primary responsibility for hosting and
17 maintaining the National Internet Crimes Against
18 Children Data System;

19 (5) 1 representative of the Federal Bureau of
20 Investigation's Innocent Images National Initiative
21 or Regional Computer Forensic Lab program;

22 (6) 1 representative of the Immigration and
23 Customs Enforcement's Cyber Crimes Center;

24 (7) 1 representative of the United States Postal
25 Inspection Service; and

1 (8) 1 representative of the Department of Jus-
2 tice.

3 (g) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated for each of the fiscal
5 years 2009 through 2016, \$2,000,000 to carry out the
6 provisions of this section.

7 (h) RULE OF CONSTRUCTION.—Nothing in this sec-
8 tion may be construed to authorize any activity that is
9 inconsistent with any Federal law, regulation, or constitu-
10 tional constraint.

11 **SEC. 116. ICAC GRANT PROGRAM.**

12 (a) ESTABLISHMENT.—

13 (1) IN GENERAL.—The Attorney General is au-
14 thorized to award grants to State and local ICAC
15 task forces to assist in carrying out the duties and
16 functions described under section 114.

17 (2) FORMULA GRANTS.—

18 (A) DEVELOPMENT OF FORMULA.—At
19 least 75 percent of the total funds appropriated
20 to carry out this section shall be available to
21 award or otherwise distribute grants pursuant
22 to a funding formula established by the Attor-
23 ney General in accordance with the require-
24 ments in subparagraph (B).

1 (B) FORMULA REQUIREMENTS.—Any for-
2 mula established by the Attorney General under
3 subparagraph (A) shall—

4 (i) ensure that each State or local
5 ICAC task force shall, at a minimum, re-
6 ceive an amount equal to 0.5 percent of
7 the funds available to award or otherwise
8 distribute grants under subparagraph (A);
9 and

10 (ii) take into consideration the fol-
11 lowing factors:

12 (I) The population of each State,
13 as determined by the most recent de-
14 cennial census performed by the Bu-
15 reau of the Census.

16 (II) The number of investigative
17 leads within the applicant's jurisdic-
18 tion generated by Operation Fairplay,
19 the ICAC Data Network, the
20 CyberTipline, and other sources.

21 (III) The number of criminal
22 cases related to Internet crimes
23 against children referred to a task
24 force for Federal, State, or local pros-
25 ecution.

1 (IV) The number of successful
2 prosecutions of child exploitation
3 cases by a task force.

4 (V) The amount of training,
5 technical assistance, and public edu-
6 cation or outreach by a task force re-
7 lated to the prevention, investigation,
8 or prosecution of child exploitation of-
9 fenses.

10 (VI) Such other criteria as the
11 Attorney General determines dem-
12 onstrate the level of need for addi-
13 tional resources by a task force.

14 (3) DISTRIBUTION OF REMAINING FUNDS
15 BASED ON NEED.—

16 (A) IN GENERAL.—Any funds remaining
17 from the total funds appropriated to carry out
18 this section after funds have been made avail-
19 able to award or otherwise distribute formula
20 grants under paragraph (2)(A) shall be distrib-
21 uted to State and local ICAC task forces based
22 upon need, as set forth by criteria established
23 by the Attorney General. Such criteria shall in-
24 clude the factors under paragraph (2)(B)(ii).

1 (B) MATCHING REQUIREMENT.—A State
2 or local ICAC task force shall contribute match-
3 ing non-Federal funds in an amount equal to
4 not less than 25 percent of the amount of funds
5 received by the State or local ICAC task force
6 under subparagraph (A). A State or local ICAC
7 task force that is not able or willing to con-
8 tribute matching funds in accordance with this
9 subparagraph shall not be eligible for funds
10 under subparagraph (A).

11 (C) WAIVER.—The Attorney General may
12 waive, in whole or in part, the matching re-
13 quirement under subparagraph (B) if the State
14 or local ICAC task force demonstrates good
15 cause or financial hardship.

16 (b) APPLICATION.—

17 (1) IN GENERAL.—Each State or local ICAC
18 task force seeking a grant under this section shall
19 submit an application to the Attorney General at
20 such time, in such manner, and accompanied by
21 such information as the Attorney General may rea-
22 sonably require.

23 (2) CONTENTS.—Each application submitted
24 pursuant to paragraph (1) shall—

1 (A) describe the activities for which assist-
2 ance under this section is sought; and

3 (B) provide such additional assurances as
4 the Attorney General determines to be essential
5 to ensure compliance with the requirements of
6 this subtitle.

7 (c) ALLOWABLE USES.—Grants awarded under this
8 section may be used to—

9 (1) hire personnel, investigators, prosecutors,
10 education specialists, and forensic specialists;

11 (2) establish and support forensic laboratories
12 utilized in Internet crimes against children investiga-
13 tions;

14 (3) support investigations and prosecutions of
15 Internet crimes against children;

16 (4) conduct and assist with education programs
17 to help children and parents protect themselves from
18 Internet predators;

19 (5) conduct and attend training sessions related
20 to successful investigations and prosecutions of
21 Internet crimes against children; and

22 (6) fund any other activities directly related to
23 preventing, investigating, or prosecuting Internet
24 crimes against children.

25 (d) REPORTING REQUIREMENTS.—

1 (1) ICAC REPORTS.—To measure the results of
2 the activities funded by grants under this section,
3 and to assist the Attorney General in complying with
4 the Government Performance and Results Act (Pub-
5 lic Law 103–62; 107 Stat. 285), each State or local
6 ICAC task force receiving a grant under this section
7 shall, on an annual basis, submit a report to the At-
8 torney General that sets forth the following:

9 (A) Staffing levels of the task force, in-
10 cluding the number of investigators, prosecu-
11 tors, education specialists, and forensic special-
12 ists dedicated to investigating and prosecuting
13 Internet crimes against children.

14 (B) Investigation and prosecution perform-
15 ance measures of the task force, including—

16 (i) the number of investigations initi-
17 ated related to Internet crimes against
18 children;

19 (ii) the number of arrests related to
20 Internet crimes against children; and

21 (iii) the number of prosecutions for
22 Internet crimes against children, includ-
23 ing—

1 (I) whether the prosecution re-
2 sulted in a conviction for such crime;
3 and

4 (II) the sentence and the statu-
5 tory maximum for such crime under
6 State law.

7 (C) The number of referrals made by the
8 task force to the United States Attorneys office,
9 including whether the referral was accepted by
10 the United States Attorney.

11 (D) Statistics that account for the disposi-
12 tion of investigations that do not result in ar-
13 rests or prosecutions, such as referrals to other
14 law enforcement.

15 (E) The number of investigative technical
16 assistance sessions that the task force provided
17 to nonmember law enforcement agencies.

18 (F) The number of computer forensic ex-
19 aminations that the task force completed.

20 (G) The number of law enforcement agen-
21 cies participating in Internet crimes against
22 children program standards established by the
23 task force.

24 (2) REPORT TO CONGRESS.—Not later than 1
25 year after the date of enactment of this Act, the At-

1 torney General shall submit a report to Congress
2 on—

3 (A) the progress of the development of the
4 ICAC Task Force Program established under
5 section 112; and

6 (B) the number of Federal and State in-
7 vestigations, prosecutions, and convictions in
8 the prior 12-month period related to child ex-
9 ploitation.

10 **SEC. 117. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) IN GENERAL.—There are authorized to be appro-
12 priated to carry out this subtitle—

- 13 (1) \$60,000,000 for fiscal year 2009;
14 (2) \$60,000,000 for fiscal year 2010;
15 (3) \$60,000,000 for fiscal year 2011;
16 (4) \$60,000,000 for fiscal year 2012; and
17 (5) \$60,000,000 for fiscal year 2013.

18 (b) AVAILABILITY.—Funds appropriated under sub-
19 section (a) shall remain available until expended.

1 **Subtitle B—ADDITIONAL MEAS-**
2 **URES TO COMBAT CHILD EX-**
3 **PLOITATION**

4 **SEC. 121. ADDITIONAL REGIONAL COMPUTER FORENSIC**
5 **LABS.**

6 (a) **ADDITIONAL RESOURCES.**—The Attorney Gen-
7 eral shall establish additional computer forensic capacity
8 to address the current backlog for computer forensics, in-
9 cluding for child exploitation investigations. The Attorney
10 General may utilize funds under this subtitle to increase
11 capacity at existing regional forensic laboratories or to add
12 laboratories under the Regional Computer Forensic Lab-
13 oratories Program operated by the Federal Bureau of In-
14 vestigation.

15 (b) **PURPOSE OF NEW RESOURCES.**—The additional
16 forensic capacity established by resources provided under
17 this section shall be dedicated to assist Federal agencies,
18 State and local Internet Crimes Against Children task
19 forces, and other Federal, State, and local law enforce-
20 ment agencies in preventing, investigating, and pros-
21 ecuting Internet crimes against children.

22 (c) **NEW COMPUTER FORENSIC LABS.**—If the Attor-
23 ney General determines that new regional computer foren-
24 sic laboratories are required under subsection (a) to best

1 address existing backlogs, such new laboratories shall be
 2 established pursuant to subsection (d).

3 (d) LOCATION OF NEW LABS.—The location of any
 4 new regional computer forensic laboratories under this
 5 section shall be determined by the Attorney General, in
 6 consultation with the Director of the Federal Bureau of
 7 Investigation, the Regional Computer Forensic Laboratory
 8 National Steering Committee, and other relevant stake-
 9 holders.

10 (e) REPORT.—Not later than 1 year after the date
 11 of enactment of this Act, and every year thereafter, the
 12 Attorney General shall submit a report to the Congress
 13 on how the funds appropriated under this section were uti-
 14 lized.

15 (f) AUTHORIZATION OF APPROPRIATIONS.—There
 16 are authorized to be appropriated for fiscal years 2009
 17 through 2013, \$2,000,000 to carry out the provisions of
 18 this section.

19 **Subtitle C—Effective Child** 20 **Pornography Prosecution**

21 **SEC. 131. AMENDMENT TO SECTION 2256 OF TITLE 18,** 22 **UNITED STATES CODE.**

23 Section 2256(5) of title 18, United States Code is
 24 amended by—

25 (1) striking “and” before “data”; and

1 (2) after “visual image” by inserting “, and
 2 data which is capable of conversion into a visual
 3 image that has been transmitted by any means,
 4 whether or not stored in a permanent format”.

5 **SEC. 132. AMENDMENT TO SECTION 2260 OF TITLE 18,**
 6 **UNITED STATES CODE.**

7 Section 2260(a) of title 18, United States Code, is
 8 amended by—

9 (1) inserting “or for the purpose of transmit-
 10 ting a live visual depiction of such conduct” after
 11 “for the purpose of producing any visual depiction of
 12 such conduct”; and

13 (2) inserting “or transmitted” after “im-
 14 ported”.

15 **SEC. 133. PROHIBITING THE ADAPTATION OR MODIFICA-**
 16 **TION OF AN IMAGE OF AN IDENTIFIABLE**
 17 **MINOR TO PRODUCE CHILD PORNOGRAPHY.**

18 (a) OFFENSE.—Subsection (a) of section 2252A of
 19 title 18, United States Code, is amended—

20 (1) in paragraph (5), by striking “; or” at the
 21 end and inserting a semicolon;

22 (2) in paragraph (6), by striking the period at
 23 the end and inserting “; or”; and

24 (3) by inserting after paragraph (6) the fol-
 25 lowing:

1 “(7) in or affecting interstate or foreign com-
 2 merce, knowingly modifies, with intent to distribute,
 3 a visual depiction of an identifiable minor so that
 4 the depiction becomes child pornography,”.

5 (b) PUNISHMENT.—Subsection (b) of section 2252A
 6 of title 18, United States Code, is amended by adding at
 7 the end the following:

8 “(3) Whoever violates, or attempts or conspires to
 9 violate, subsection (a)(7) shall be fined under this title or
 10 imprisoned not more than 15 years, or both.”.

11 **Subtitle D—National Institute of** 12 **Justice Study of Risk Factors**

13 **SEC. 141. NIJ STUDY OF RISK FACTORS FOR ASSESSING** 14 **DANGEROUSNESS.**

15 (a) IN GENERAL.—Not later than 1 year after the
 16 date of enactment of this Act, the National Institute of
 17 Justice shall prepare a report to identify investigative fac-
 18 tors that reliably indicate whether a subject of an online
 19 child exploitation investigation poses a high risk of harm
 20 to children. Such a report shall be prepared in consulta-
 21 tion and coordination with Federal law enforcement agen-
 22 cies, the National Center for Missing and Exploited Chil-
 23 dren, Operation Fairplay at the Wyoming Attorney Gen-
 24 eral’s Office, the Internet Crimes Against Children Task
 25 Force, and other State and local law enforcement.

1 (b) CONTENTS OF ANALYSIS.—The report required
2 by subsection (a) shall include a thorough analysis of po-
3 tential investigative factors in on-line child exploitation
4 cases and an appropriate examination of investigative data
5 from prior prosecutions and case files of identified child
6 victims.

7 (c) REPORT TO CONGRESS.—Not later than 1 year
8 after the date of enactment of this Act, the National Insti-
9 tute of Justice shall submit a report to the House and
10 Senate Judiciary Committees that includes the findings of
11 the study required by this section and makes recommenda-
12 tions on technological tools and law enforcement proce-
13 dures to help investigators prioritize scarce resources to
14 those cases where there is actual hands-on abuse by the
15 suspect.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated \$500,000 to the Na-
18 tional Institute of Justice to conduct the study required
19 under this section.

1 **TITLE II—ENHANCING THE EF-**
 2 **FECTIVE PROSECUTION OF**
 3 **CHILD PORNOGRAPHY ACT**
 4 **OF 2007**

5 **SEC. 201. SHORT TITLE.**

6 This title may be cited as the “Enhancing the Effec-
 7 tive Prosecution of Child Pornography Act of 2007”.

8 **SEC. 202. MONEY LAUNDERING PREDICATE.**

9 Section 1956(c)(7)(D) of title 18, United States
 10 Code, is amended by inserting “section 2252A (relating
 11 to child pornography) where the child pornography con-
 12 tains a visual depiction of an actual minor engaging in
 13 sexually explicit conduct, section 2260 (production of cer-
 14 tain child pornography for importation into the United
 15 States),” before “section 2280”.

16 **SEC. 203. KNOWINGLY ACCESSING CHILD PORNOGRAPHY**
 17 **WITH THE INTENT TO VIEW CHILD PORNOG-**
 18 **RAPHY.**

19 (a) MATERIALS INVOLVING SEXUAL EXPLOITATION
 20 OF MINORS.—Section 2252(a)(4) of title 18, United
 21 States Code, is amended—

22 (1) in subparagraph (A), by inserting “, or
 23 knowingly accesses with intent to view,” after “pos-
 24 sesses”; and

1 (2) in subparagraph (B), by inserting “, or
 2 knowingly accesses with intent to view,” after “pos-
 3 sesses”.

4 (b) MATERIALS CONSTITUTING OR CONTAINING
 5 CHILD PORNOGRAPHY.—Section 2252A(a)(5) of title 18,
 6 United States Code, is amended—

7 (1) in subparagraph (A), by inserting “, or
 8 knowingly accesses with intent to view,” after “pos-
 9 sesses”; and

10 (2) in subparagraph (B), by inserting “, or
 11 knowingly accesses with intent to view,” after “pos-
 12 sesses”.

13 **TITLE III—SECURING ADOLES-**
 14 **CENTS FROM ONLINE EXPLOI-**
 15 **TATION**

16 **SEC. 301. REPORTING REQUIREMENTS OF ELECTRONIC**
 17 **COMMUNICATION SERVICE PROVIDERS AND**
 18 **REMOTE COMPUTING SERVICE PROVIDERS.**

19 (a) IN GENERAL.—Chapter 110 of title 18, United
 20 States Code, is amended by inserting after section 2258
 21 the following:

22 **“§ 2258A. Reporting requirements of electronic com-**
 23 **munication service providers and remote**
 24 **computing service providers**

25 “(a) DUTY TO REPORT.—

1 “(1) IN GENERAL.—Whoever, while engaged in
2 providing an electronic communication service or a
3 remote computing service to the public through a fa-
4 cility or means of interstate or foreign commerce,
5 obtains actual knowledge of any facts or cir-
6 cumstances described in paragraph (2) shall, as soon
7 as reasonably possible—

8 “(A) complete and maintain with current
9 information a registration with the
10 CyberTipline of the National Center for Missing
11 and Exploited Children, or any successor to the
12 CyberTipline operated by such center, by pro-
13 viding the mailing address, telephone number,
14 facsimile number, electronic mail address of,
15 and individual point of contact for, such elec-
16 tronic communication service provider or remote
17 computing service provider; and

18 “(B) make a report of such facts or cir-
19 cumstances to the CyberTipline, or any suc-
20 cessor to the CyberTipline operated by such
21 center.

22 “(2) FACTS OR CIRCUMSTANCES.—The facts or
23 circumstances described in this paragraph are any
24 facts or circumstances that appear to indicate a vio-
25 lation of—

1 “(A) section 2251, 2251A, 2252, 2252A,
2 2252B, or 2260 that involves child pornog-
3 raphy; or

4 “(B) section 1466A.

5 “(b) CONTENTS OF REPORT.—To the extent avail-
6 able to an electronic communication service provider or a
7 remote computing service provider, each report under sub-
8 section (a)(1) shall include the following information:

9 “(1) INFORMATION ABOUT THE INVOLVED IN-
10 DIVIDUAL.—Information relating to the Internet
11 identity of any individual who appears to have vio-
12 lated a Federal law in the manner described in sub-
13 section (a)(2), which shall, to the extent reasonably
14 practicable, include the electronic mail address,
15 website address, uniform resource locator, or any
16 other identifying information, including self-reported
17 identifying information.

18 “(2) HISTORICAL REFERENCE.—Information
19 relating to when any apparent child pornography
20 was uploaded, transmitted, reported to, or discovered
21 by the electronic communication service provider or
22 remote computing service provider, as the case may
23 be, including a date and time stamp and time zone.

24 “(3) GEOGRAPHIC LOCATION INFORMATION.—
25 Information relating to the geographic location of

1 the involved individual, hosting website, or uniform
2 resource locator, which shall include the Internet
3 Protocol Address or verified billing address, or, if
4 not reasonably available, at least 1 form of geo-
5 graphic identifying information, including area code
6 or zip code. The information shall also include any
7 self-reported geographic information.

8 “(4) IMAGES OF APPARENT CHILD PORNOG-
9 RAPHY.—Any image of any apparent child pornog-
10 raphy relating to the incident such report is regard-
11 ing.

12 “(5) COMMINGLED IMAGES.—Any images, data,
13 or other digital files (collectively referred to as ‘dig-
14 ital files’) which are commingled or interspersed
15 among the images of apparent child pornography. If
16 it would impose an undue hardship to provide these
17 commingled digital files as part of the report, be-
18 cause of the volume of the digital files or for other
19 reasons, the reporting company shall, in lieu of pro-
20 viding those digital files, inform the CyberTipline of
21 the existence of such digital files, and retain those
22 digital files as if they were part of the report as re-
23 quired pursuant to subsection (h).

24 “(c) FORWARDING OF REPORT TO LAW ENFORCE-
25 MENT.—

1 “(1) IN GENERAL.—The National Center for
2 Missing and Exploited Children shall forward each
3 report made under subsection (a)(1) to any appro-
4 priate law enforcement agency designated by the At-
5 torney General under subsection (d)(2).

6 “(2) STATE AND LOCAL LAW ENFORCEMENT.—
7 The National Center for Missing and Exploited Chil-
8 dren may forward any report made under subsection
9 (a)(1) to an appropriate official of a State or polit-
10 ical subdivision of a State for the purpose of enforce-
11 ing State criminal law.

12 “(3) FOREIGN LAW ENFORCEMENT.—The Na-
13 tional Center for Missing and Exploited Children
14 may forward any report made under subsection
15 (a)(1) to any appropriate foreign law enforcement
16 agency designated by the Attorney General under
17 subsection (d)(3), subject to the conditions estab-
18 lished by the Attorney General under subsection
19 (d)(3).

20 “(d) ATTORNEY GENERAL RESPONSIBILITIES.—

21 “(1) IN GENERAL.—The Attorney General shall
22 enforce this section.

23 “(2) DESIGNATION OF FEDERAL AGENCIES.—
24 The Attorney General shall designate promptly the
25 Federal law enforcement agency or agencies to

1 which a report shall be forwarded under subsection
2 (c)(1).

3 “(3) DESIGNATION OF FOREIGN AGENCIES.—

4 The Attorney General shall promptly—

5 “(A) designate the foreign law enforcement
6 agencies to which a report may be forwarded
7 under subsection (c)(3);

8 “(B) establish the conditions under which
9 such a report may be forwarded to such agen-
10 cies; and

11 “(C) develop a process for foreign law en-
12 forcement agencies to request assistance from
13 Federal law enforcement agencies in obtaining
14 evidence relating to a report referred under
15 subsection (c)(3).

16 “(e) FAILURE TO REPORT.—An electronic commu-
17 nication service provider or remote computing service pro-
18 vider that knowingly and willfully fails to make a report
19 required under subsection (a)(1) shall be fined—

20 “(1) in the case of an initial knowing and will-
21 ful failure to make a report, not more than
22 \$150,000; and

23 “(2) in the case of any second or subsequent
24 knowing and willful failure to make a report, not
25 more than \$300,000.

1 “(f) PROTECTION OF PRIVACY.—Nothing in this sec-
 2 tion shall be construed to require an electronic commu-
 3 nication service provider or a remote computing service
 4 provider to—

5 “(1) monitor any user, subscriber, or customer
 6 of that provider;

7 “(2) monitor the content of any communication
 8 of any person described in paragraph (1); or

9 “(3) affirmatively seek facts or circumstances
 10 described in subsection (a)(2).

11 “(g) CONDITIONS OF DISCLOSURE INFORMATION
 12 CONTAINED WITHIN REPORT.—

13 “(1) IN GENERAL.—Except as provided in para-
 14 graph (2), a law enforcement agency that receives a
 15 report under subsection (c) shall not disclose any in-
 16 formation contained in that report.

17 “(2) PERMITTED DISCLOSURES.—A law en-
 18 forcement agency may disclose information in a re-
 19 port received under subsection (c)—

20 “(A) to an attorney for the government for
 21 use in the performance of the official duties of
 22 that attorney;

23 “(B) to such officers and employees of that
 24 law enforcement agency, as may be necessary in

1 the performance of their investigative and rec-
2 ordkeeping functions;

3 “(C) to such other government personnel
4 (including personnel of a State or subdivision of
5 a State) as are determined to be necessary by
6 an attorney for the government to assist the at-
7 torney in the performance of the official duties
8 of the attorney in enforcing Federal criminal
9 law;

10 “(D) if the report discloses a violation of
11 State criminal law, to an appropriate official of
12 a State or subdivision of a State for the pur-
13 pose of enforcing such State law;

14 “(E) to a defendant in a criminal case or
15 the attorney for that defendant, to the extent
16 the information relates to a criminal charge
17 pending against that defendant;

18 “(F) to an electronic communication serv-
19 ice provider or remote computing provider if
20 necessary to facilitate response to legal process
21 issued in connection to that report, in which
22 case, the electronic communication service pro-
23 vider or remote computing service provider shall
24 be prohibited from disclosing the contents of

1 that report to any person, except as necessary
2 to respond to the legal process; and

3 “(G) as ordered by a court upon a showing
4 of good cause and pursuant to any protective
5 orders or other conditions that the court may
6 impose.

7 “(h) EVIDENCE PRESERVATION.—

8 “(1) IN GENERAL.—For the purposes of this
9 section, the notification to an electronic communica-
10 tion service provider or a remote computing service
11 provider by the CyberTipline of receipt of a report
12 under subsection (a)(1) shall be treated as notice to
13 preserve, as if such notice was made pursuant to
14 section 2703(f).

15 “(2) PRESERVATION OF REPORT.—Pursuant to
16 paragraph (1), an electronic communication service
17 provider or a remote computing service shall pre-
18 serve the contents of the report provided under sub-
19 section (a)(1) and the information described in sec-
20 tion 2703(e)(2) relating to the involved individual
21 for not less than 180 days after the date of submis-
22 sion of the report under subsection (a)(1).

23 “(3) AUTHORITIES AND DUTIES NOT AF-
24 FECTED.—Nothing in this section shall be construed

1 as replacing, amending, or otherwise interfering with
2 the authorities and duties under section 2703.

3 **“§ 2258B. Limited liability for electronic communica-**
4 **tion service providers, remote computing**
5 **service providers, or domain name reg-**
6 **istrar**

7 “(a) IN GENERAL.—Except as provided in sub-
8 sections (b) and (c), a civil claim or criminal charge
9 against an electronic communication service provider, a re-
10 mote computing service provider, or domain name reg-
11 istrar, including any director, officer, employee, or agent
12 of such electronic communication service provider, remote
13 computing service provider, or domain name registrar
14 arising from the performance of the reporting responsibil-
15 ities of such electronic communication service provider, re-
16 mote computing service provider, or domain name reg-
17 istrar under this section, section 2258A, or section 2258C
18 may not be brought in any Federal or State court.

19 “(b) INTENTIONAL, RECKLESS, OR OTHER MIS-
20 CONDUCT.—Subsection (a) shall not apply to a claim if
21 the electronic communication service provider, remote
22 computing service provider, or domain name registrar, or
23 a director, officer, employee, or agent of that electronic
24 communication service provider, remote computing service
25 provider, or domain name registrar—

1 “(1) engaged in intentional misconduct; or

2 “(2) acted, or failed to act—

3 “(A) with actual malice;

4 “(B) with reckless disregard to a substan-
5 tial risk of causing injury without legal jus-
6 tification; or

7 “(C) for a purpose unrelated to the per-
8 formance of any responsibility or function
9 under this section, section 2258A, or section
10 2258C.

11 “(c) ORDINARY BUSINESS ACTIVITIES.—Subsection
12 (a) shall not apply to an act or omission relating to an
13 ordinary business activity of an electronic communication
14 service provider, a remote computing service provider, or
15 domain name registrar, including general administration
16 or operations, the use of motor vehicles, or personnel man-
17 agement.

18 “(d) MINIMIZING ACCESS.—An electronic commu-
19 nication service provider, a remote computing service pro-
20 vider, and domain name registrar shall—

21 “(1) minimize the number of employees that
22 are provided access to any image provided under sec-
23 tion 2258A or 2258C; and

1 “(2) ensure that any such image is permanently
2 destroyed, upon notification from a law enforcement
3 agency.

4 **“§ 2258C. Use of images from the CyberTipline to**
5 **combat child pornography**

6 “(a) IN GENERAL.—The National Center for Missing
7 and Exploited Children is authorized to provide elements
8 relating to any image reported to its CyberTipline to an
9 electronic communication service provider or a remote
10 computing service provider for the sole and exclusive pur-
11 pose of permitting that electronic communication service
12 provider or remote computing service provider to stop the
13 further transmission of images. Such elements may in-
14 clude unique identifiers associated with a specific image,
15 Internet location of images, and other technological ele-
16 ments that can be used to identify and stop the trans-
17 mission of child pornography.

18 “(b) USE BY ELECTRONIC COMMUNICATION SERVICE
19 PROVIDERS AND REMOTE COMPUTING SERVICE PRO-
20 VIDERS.—Any electronic communication service provider
21 or remote computing service provider that receives ele-
22 ments relating to an image from the National Center for
23 Missing and Exploited Children under this section may
24 use such information only for the purposes described in
25 this section, provided that such use shall not relieve that

1 electronic communication service provider or remote com-
 2 puting service provider from its reporting obligations
 3 under section 2258A.

4 **“§ 2258D. Limited liability for the National Center for**
 5 **Missing and Exploited Children**

6 “(a) IN GENERAL.—Except as provided in sub-
 7 sections (b) and (c), a civil claim or criminal charge
 8 against the National Center for Missing and Exploited
 9 Children, including any director, officer, employee, or
 10 agent of such center, arising from the performance of the
 11 CyberTipline responsibilities or functions of such center,
 12 as described in this section, section 2258A or 2258C of
 13 this title, or section 404 of the Missing Children’s Assist-
 14 ance Act (42 U.S.C. 5773), or from the effort of such cen-
 15 ter to identify child victims may not be brought in any
 16 Federal or State court.

17 “(b) INTENTIONAL, RECKLESS, OR OTHER MIS-
 18 CONDUCT.—Subsection (a) shall not apply to a claim or
 19 charge if the National Center for Missing and Exploited
 20 Children, or a director, officer, employee, or agent of such
 21 center—

22 “(1) engaged in intentional misconduct; or

23 “(2) acted, or failed to act—

24 “(A) with actual malice;

1 “(B) with reckless disregard to a substan-
 2 tial risk of causing injury without legal jus-
 3 tification; or

4 “(C) for a purpose unrelated to the per-
 5 formance of any responsibility or function
 6 under this section, section 2258A or 2258C of
 7 this title, or section 404 of the Missing Chil-
 8 dren’s Assistance Act (42 U.S.C. 5773).

9 “(c) ORDINARY BUSINESS ACTIVITIES.—Subsection
 10 (a) shall not apply to an act or omission relating to an
 11 ordinary business activity, including general administra-
 12 tion or operations, the use of motor vehicles, or personnel
 13 management.

14 “(d) MINIMIZING ACCESS.—The National Center for
 15 Missing and Exploited Children shall—

16 “(1) minimize the number of employees that
 17 are provided access to any image provided under sec-
 18 tion 2258A; and

19 “(2) ensure that any such image is permanently
 20 destroyed upon notification from a law enforcement
 21 agency.

22 **“§ 2258E. Definitions**

23 “‘In sections 2258A through 2258D—

1 “(1) the terms ‘attorney for the government’
 2 and ‘State’ have the meanings given those terms in
 3 rule 1 of the Federal Rules of Criminal Procedure;

4 “(2) the term ‘electronic communication service’
 5 has the meaning given that term in section 2510;

6 “(3) the term ‘electronic mail address’ has the
 7 meaning given that term in section 3 of the CAN-
 8 SPAM Act of 2003 (15 U.S.C. 7702);

9 “(4) the term ‘Internet’ has the meaning given
 10 that term in section 1101 of the Internet Tax Free-
 11 dom Act (47 U.S.C. 151 note);

12 “(5) the term ‘remote computing service’ has
 13 the meaning given that term in section 2711; and

14 “(6) the term ‘website’ means any collection of
 15 material placed in a computer server-based file ar-
 16 chive so that it is publicly accessible, over the Inter-
 17 net, using hypertext transfer protocol or any suc-
 18 cessor protocol.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

20 (1) REPEAL OF SUPERCEDED PROVISION.—Sec-
 21 tion 227 of the Crime Control Act of 1990 (42
 22 U.S.C. 13032) is repealed.

23 (2) TABLE OF SECTIONS.—The table of sections
 24 for chapter 110 of title 18, United States Code, is

1 amended by inserting after the item relating to sec-
 2 tion 2258 the following:

“Sec. 2258A. Reporting requirements of electronic communication service pro-
 viders and remote computing service providers.

“Sec. 2258B. Limited liability for electronic communication service providers,
 remote computing service providers, or domain name registrar.

“Sec. 2258C. Use of images from the CyberTipline to combat child pornog-
 raphy.

“Sec. 2258D. Limited liability for the National Center for Missing and Ex-
 ploited Children.

“Sec. 2258E. Definitions.”.

3 **TITLE IV—IMPROVEMENTS TO**
 4 **COMMERCE CLAUSE AU-**
 5 **THORITIES TO ALLOW FOR**
 6 **EFFECTIVE CHILD PORNOG-**
 7 **RAPHY PROSECUTIONS**

8 **SEC. 401. EFFECTIVE CHILD PORNOGRAPHY PROSECUTION.**

9 (a) SEXUAL EXPLOITATION OF CHILDREN.—Section
 10 2251 of title 18, United States Code, is amended—

11 (1) in subsection (a), by—

12 (A) inserting “or for the purpose of trans-
 13 mitting a live visual depiction of such conduct”
 14 after “for the purpose of producing any visual
 15 depiction of such conduct”; and

16 (B) by striking “transported” the first
 17 place it appears and all that follows and insert-
 18 ing “transported or transmitted in or affecting
 19 interstate or foreign commerce or using a facil-
 20 ity or means of interstate or foreign commerce
 21 or mailed, if that visual depiction was produced

1 or transmitted using materials that have been
2 mailed, shipped, or transported in interstate or
3 foreign commerce by any means, including by
4 computer, or if such visual depiction has actu-
5 ally been transported or transmitted in or af-
6 fecting interstate or foreign commerce or using
7 a facility or means of interstate or foreign com-
8 merce or mailed.”;

9 (2) in subsection (b), by—

10 (A) inserting “or for the purpose of trans-
11 mitting a live visual depiction of such conduct”
12 after “for the purpose of producing any visual
13 depiction of such conduct”; and

14 (B) by striking “transported” the first
15 place it appears and all that follows and insert-
16 ing the following: “transported or transmitted
17 in or affecting interstate or foreign commerce
18 or using a facility or means of interstate or for-
19 eign commerce or mailed, if that visual depic-
20 tion was produced or transmitted using mate-
21 rials that have been mailed, shipped, or trans-
22 ported in interstate or foreign commerce by any
23 means, including by computer, or if such visual
24 depiction has actually been transported or
25 transmitted in or affecting interstate or foreign

1 commerce or using a facility or means of inter-
 2 state or foreign commerce or mailed.”;

3 (3) in subsection (c)(2), by striking “computer”
 4 each place it appears and inserting “using a facility
 5 or means of interstate or foreign commerce”; and

6 (4) in subsection (d)(2), by striking “trans-
 7 ported in interstate or foreign commerce by any
 8 means including by computer” each place it appears
 9 and inserting “transported in or affecting interstate
 10 or foreign commerce or using a facility or means of
 11 interstate or foreign commerce”.

12 (b) SELLING OR BUYING OF CHILDREN.—Section
 13 2251A(c)(2) of title 18, United States Code, is amended
 14 by striking “in interstate or foreign commerce by any
 15 means including by computer or” and inserting “in or af-
 16 fecting interstate or foreign commerce or using a facility
 17 or means of interstate and foreign commerce or by”.

18 (c) CERTAIN ACTIVITIES RELATING TO MATERIAL
 19 INVOLVING THE SEXUAL EXPLOITATION OF MINORS.—
 20 Section 2252(a) of title 18, United States Code, is amend-
 21 ed—

22 (1) in paragraph (1), by striking “in interstate
 23 or foreign commerce by any means including by
 24 computer” and inserting “in or affecting interstate

1 or foreign commerce or using a facility or means of
2 interstate or foreign commerce”;

3 (2) in paragraph (2), in the matter preceding
4 subparagraph (A)—

5 (A) by striking “has been shipped or trans-
6 ported in interstate or foreign commerce” and
7 inserting “has been shipped or transported in
8 or affecting interstate or foreign commerce or
9 using a facility or means of interstate or foreign
10 commerce”; and

11 (B) by striking “distribution in interstate
12 or foreign commerce” and inserting “distribu-
13 tion in or affecting interstate or foreign com-
14 merce or using a facility or means of interstate
15 or foreign commerce”;

16 (3) in paragraph (3)(B), in the matter pre-
17 ceding clause (i), by striking “has been shipped or
18 transported in interstate or foreign commerce” and
19 inserting “has been shipped or transported in or af-
20 fecting interstate or foreign commerce or using a fa-
21 cility or means of interstate or foreign commerce”;
22 and

23 (4) in paragraph (4)(B), in the matter pre-
24 ceding clause (i), by striking “has been shipped or
25 transported in interstate or foreign commerce” and

1 inserting “has been shipped or transported in or af-
 2 fecting interstate or foreign commerce or using a fa-
 3 cility or means of interstate or foreign commerce”.

4 (d) CERTAIN ACTIVITIES RELATING TO MATERIAL
 5 CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—

6 Section 2252A(a) of title 18, United States Code, is
 7 amended—

8 (1) in paragraph (1), by striking “in interstate
 9 or foreign commerce by any means, including by
 10 computer” and inserting “in or affecting interstate
 11 foreign commerce or using a facility or means of
 12 interstate or foreign commerce”;

13 (2) in paragraph (2)—

14 (A) in subparagraph (A), by striking “in
 15 interstate or foreign commerce by any means,
 16 including by computer” and inserting “in or af-
 17 fecting interstate or foreign commerce or using
 18 a facility or means of interstate or foreign com-
 19 merce”; and

20 (B) in subparagraph (B), by striking “in
 21 interstate or foreign commerce by any means,
 22 including by computer” and inserting “in or af-
 23 fecting interstate or foreign commerce or using
 24 a facility or means of interstate or foreign com-
 25 merce”;

1 (3) in paragraph (3)—

2 (A) in subparagraph (A), by striking “in
3 interstate or foreign commerce by any means,
4 including by computer” and inserting “in or af-
5 fecting interstate or foreign commerce or using
6 a facility or means of interstate or foreign com-
7 merce”; and

8 (B) in subparagraph (B), by striking “in
9 interstate or foreign commerce by any means,
10 including by computer” and inserting “in or af-
11 fecting interstate or foreign commerce or using
12 a facility or means of interstate or foreign com-
13 merce”;

14 (4) in paragraph (4)(B), by striking “in inter-
15 state or foreign commerce by any means, including
16 by computer” the first place it appears and inserting
17 “in or affecting interstate or foreign commerce or
18 using a facility or means of interstate or foreign
19 commerce”;

20 (5) in paragraph (5)(B), by striking “in inter-
21 state or foreign commerce by any means, including
22 by computer” the first place it appears and inserting
23 “in or affecting interstate or foreign commerce or
24 using a facility or means of interstate or foreign
25 commerce”; and

1 (6) in paragraph (6)—

2 (A) in subparagraph (A), by striking “in
3 interstate or foreign commerce by any means,
4 including by computer” and inserting “in or af-
5 fecting interstate or foreign commerce or using
6 a facility or means of interstate or foreign com-
7 merce”; and

8 (B) in subparagraph (C), by striking
9 “transmitting or causing to be transmitted any
10 wire communication in interstate or foreign
11 commerce, including by computer” and insert-
12 ing “or a facility or means of interstate or for-
13 eign commerce”.

14 (e) OBSCENE VISUAL REPRESENTATIONS OF THE
15 SEXUAL ABUSE OF CHILDREN.—Section 1466A(d)(4) of
16 title 18, United States Code, is amended by striking
17 “transported in interstate or foreign commerce by any
18 means, including by computer” the first place it appears
19 and inserting “transported in or affecting interstate or
20 foreign commerce or using a facility or means of interstate
21 or foreign commerce”.

22 (f) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion or the amendments made by this section may be con-
24 strued to—

1 (1) imply that there is not an overlap between
2 conduct in or affecting interstate or foreign com-
3 merce and conduct using a facility or means of
4 interstate or foreign commerce; or

5 (2) foreclose any argument or ruling with re-
6 spect to any Federal law that, for the purposes of
7 Federal jurisdiction, the use of a facility or means
8 of interstate or foreign commerce affects interstate
9 or foreign commerce.

Calendar No. 906

110TH CONGRESS
2^D Session
S. 3344

A BILL

To defend against child exploitation and child pornography through improved Internet Crimes Against Children task forces and enhanced tools to block illegal images, and to eliminate the unwarranted release of convicted sex offenders.

JULY 28, 2008

Read the second time and placed on the calendar